

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 18996 of 2016

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Satyendra Narayan Roy, Son of Late Manki Roy, Resident of Mohalla- North
Patliputra, Behind Usha Apartments, P.O.+P.S.- Patliputra, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Agriculture Department, Government of Bihar, Patna.
2. Agriculture Production Commissioner, Agriculture Department, Government of Bihar, Patna.
3. Bihar State Agriculture Marketing Board (Repealed) through its Administrator, Pant Bhawan, Bailey Road, Patna.
4. Administrator, Bihar State Agriculture Marketing Board (Repealed), Pant Bhawan, Bailey Road, Patna.
5. Under Secretary, Bihar State Agriculture Marketing Board (Repealed), Pant Bhawan, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Kumar, Advocate
For the Respondent/s : Mr. Raghwanand, G.A. 11
Mr. Prabhat Kumar, A.C. to G.A. 11

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 18-08-2018

Heard learned counsel for the petitioner and State.

2. The petitioner has moved the Court for the following

reliefs:

“That this writ application is being filed for issuance of appropriate writ/writs, order/orders for a direction to the respondents to pay retiral dues to the petitioner taking into account service render in Bihar State Agro Industries Development Corporation with interest after quashing memo no. 203 dated 01.02.12 (Annexure-5) whereby and where under the Administrator, Bihar State Agriculture Marketing Board (Dissolved) has passed an order in view of direction of the Hon’ble Court passed in C.W.J.C. no. 18888 of 2010. The writ



application was disposed of on the statement of the Counsel appearing on behalf of the Bihar State Agriculture Marketing Board that the grievance of the petitioner would be considered in the light of judgment contained in 12/1 (CWJC no. 16370 of 2004) and such representation would be disposed of accordingly.

The contempt application was filed being M.J.C. No. 2237 of 2011. During the pendency of the contempt application the representation of the petitioner was disposed of denying the right of the petitioner saying that the case of the petitioner is not in terms of C.W.J.C. No. 16370 of 2004. The Hon'ble Court disposed of the contempt application vide order dated 19.10.2016 giving liberty to the petitioner to avail appropriate remedy in relation to an order dated 01.02.2012 and thus the instant writ application has been filed."

3. The petitioner was initially an employee of the Bihar State Agro Industries Development Corporation (hereinafter referred to as the 'Corporation') since 16.10.1970. He joined under the Bihar State Agriculture Marketing Board (hereinafter referred to as the 'Board') on 19.11.1994, on deputation on the basis of Foreign Service Condition where later his services were absorbed with effect from 31.06.1995. The petitioner superannuated on 30.04.2008. He filed C.W.J.C. No. 18888 of 2010, praying for counting of his service in the Corporation for the purposes of counting his total length of service. The same was disposed off on 19.11.2010 with liberty to file representation before the authorities. He also filed



M.J.C. No. 2237 of 2011, as the representation filed by him in terms of the order in the writ application was not being disposed off. However, during the pendency of the contempt application, his representation was disposed off by order dated 01.02.2012 passed by the Administrator of the Board holding that his case was not similar to that of Anil Kumar Saha on which the petitioner had based his claim i.e., order dated 28.01.2009 in C.W.J.C. No. 16370 of 2004 (**Anil Kumar Saha vs. The State of Bihar and Others.**). Thus, M.J.C. No. 2237 of 2011 was disposed off on 19.10.2016, with liberty to the petitioner to assail the order dated 01.02.2012, leading to filing of the present case.

4. Learned counsel for the petitioner submitted that Anil Kumar Saha was similarly situated as he was also initially appointed in the Corporation and thereafter his service was absorbed in the Board, as per the policy of the State Government and when he was not getting his retiral benefits counting the service under the Corporation, he had moved the Court in C.W.J.C. No. 16370 of 2004, which was disposed off by order dated 28.01.2009 holding that the entire period of service, including that rendered under the Corporation, had to be counted for retiral and other terminal benefits. Thus, learned counsel submitted that the period 16.10.1970 to 31.06.1995 be also counted for payment of his retiral dues.



5. Learned counsel for the State submitted that the only basis on which the petitioner is relying is the order dated 28.01.2009 in the case of **Anil Kumar Saha** (supra), which was different to that of the petitioner and which is the ground taken in the impugned order and which is also justified, both in law as well as on facts. From the counter affidavit filed on behalf of the respondent no. 3, learned counsel for the State submitted that Anil Kumar Saha was initially posted in the Board in terms of the policy of the State Government to absorb the surplus staff in various departments or in other Corporations or undertaking on various posts and later on he was permanently absorbed in the Board on 14.03.1990, whereas in the case of the petitioner he was posted in the Board on the basis of his own application on 19.11.1994, on deputation basis on Foreign Service Condition. It was submitted that thereafter also the petitioner applied for being absorbed under the Board on 18.04.1995, and upon consideration, he was absorbed under the Board with effect from 31.06.1995. Learned counsel submitted that in such view of the matter, the petitioner is not similarly situated to Anil Kumar Saha.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present writ application. The petitioner was appointed under the Corporation and thereafter from the records



of the present case, it is apparent that he filed an application before the authorities of the Board for him being posted in the Board. His request being allowed, he was sent on deputation on 19.11.1994 on the basis of Foreign Service Condition on deputation to the Board. Later, on the basis of application made by the petitioner on 18.04.1995, he was absorbed under the Board with effect from 31.06.1995. Thus, the Court finds that the Government had not *suo motu* on its own volition sent the petitioner from the Corporation to the Board, which was at the own request of the petitioner. Further, the initial transfer was purely on deputation on Foreign Service Condition and thereafter also on the application of the petitioner himself, his service was absorbed under the Board. This was not in the case of Anil Kumar Saha in whose case, the decisions were taken unilaterally by the authorities and not at the request/application made by him. This is one aspect of the matter. Coming to the larger aspect, the petitioner being employed under the Corporation, which, though being a Government undertaking, was totally a separate and distinct identity from the State, being a completely autonomous unit. If for any reason it was not functioning properly and was also facing losses, the petitioner having been directly appointed under the Corporation had to suffer the same fate as that of the Corporation. Thus, the Court finds that the State has been gracious and indulgent



to him by allowing him to go for deputation under the Board and even thereafter, the Board has absorbed his services. However, these were purely acts of mercy/grace which instead of putting the petitioner on road allowed him to remain in service in a different organization. Thus, for a grace shown to him, he cannot claim benefit of his past service under the Corporation.

7. For the reasons aforesaid, both on facts as well as in law, the Court finds no ground to interfere in the matter and accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

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